IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 92 of 2000

Date of decision 3.7.2007

State of H.P. …Appellant.

Versus

shwar Dass and another …Respondents.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant : Mr. Ashok Chaudhary, Addl. A.G.
For the respondents : Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate, for respondent No. 2.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for offences punishable under Sections 420, 468, 471, 120-B of the Indian Penal Code and Section 13 (2) of the Prevention of Corruption Act on the following allegations. Ishwar Dass, respondent had a house in village Dangaar, Tehsil Ghumarwin, District Bilaspur. In the year 1994 during the rainy season there was heavy rain-fall. As a result thereof, some houses collapsed and the Government got assessed the damage from the Patwari for paying

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Whether Reporters of Local Papers may be allowed to see the Judgment?

compensation to the affected persons. Even though the house of Ishwar Dass had not collapsed due to the down-pour and had in fact been pulled down by him by engaging PW-2 Inder Singh, PW-3 Sarwan Kumar and PW-8 Dandu Ram, he in connivance with the other respondent Prakash Chand, who was then working as Patwari, got prepared a false claim for compensation alleging that the house had collapsed due to rains. Prakash Chand, respondent in his capacity as Patwari, assessed the damage at Rs.16,120/-. On the basis of that assessment a sum of Rs.3200/- was paid by the Government to Ishwar Dass as compensation. Prakash Chand is alleged to have issued false and bogus report in favour of Ishwar Dass that the house had collapsed due to rains and thus he caused wrongful loss to the State and helped Ishwar Dass to make wrongful gain.

3. The trial Court, i.e. the Special Judge, has acquitted both the respondents holding that the above-named three labourers, who were allegedly engaged to demolish the house by respondent Ishwar Dass, have not supported the prosecution version. Three other witnesses examined by the prosecution, namely Mansha Ram (PW-7), Sushila Devi (PW-11) and Chandu Ram (PW-12) have been disbelieved by the trial Court on account of these persons being not on good terms with respondent Ishwar Dass and one of them (Mansha Ram, PW-7) having a grouse against respondent Prakash Chand.

4. A perusal of the evidence on record and the judgment of the trial Court shows that the view taken by the trial court is reasonably possible. In other words, the view taken by the trial Court is not perverse calling for interference in the judgment of acquittal.

5. As per prosecution story PW-2 Inder Singh, PW-3 Sarwan Kumar and PW-8 Dandu Ram were engaged by Ishwar Dass, respondent to pull down his house. The three witnesses have stated with one voice that they were engaged by Ishwar Dass not for pulling down or demolishing the house, but to clear the debris after the house collapsed due to heavy rains. No doubt the witnesses were cross-examined by the leave of the Court, but nothing has come in their testimony, that is to say in the cross-cross-examination done by the prosecution, that they have made false statements to favour the respondents.

6. On the other hand, PW-7 Mansha Ram, PW-11 Sushila Devi and PW-12 Chandu Ram, who have testified that the house had been demolished by respondent Ishwar Dass, are inimically disposed towards him and one of them, namely PW-7 Mansha Ram has grudge even against respondent Prakash Chand. In his cross-examination PW-7 Mansha Ram admits that he is having many criminal and civil cases pending between him and respondent Ishwar Dass in different Courts and that one of the cases pertains to the house, in question, itself. Further, the witness says that the house was pulled down and re-constructed in the year 1996 whereas it is the prosecution's own case that the house had been pulled down in the year 1994. PW-11 Sushila Devi admits that she is not on speaking terms with respondent Ishwar Dass. Further she admits that she resides at Kapurthala in Punjab and not in the village where the house is situate. If it is so, how can she be said to knowing that the house had been demolished by respondent Ishwar Dass himself by engaging the above-named three witnesses. PW-12 Chandu Ram has stated that he had litigation with respondent Ishwar Dass with respect to a piece of land, measuring about

three Bighas, over which he claimed tenancy and that he lost that case and appeal against the decree of the trial Court was pending in the Court of District Judge. PW-7 Mansha Ram admits that once respondent Prakash Chand had given demarcation, the result of which went against him and he had challenged that result.

7. In view of the above stated position, appeal is dismissed.

July 3, 2007 (BC) **(Surjit Singh)**
Judge